

Application Ser. No.: 10/586,766

Title: ROLLING FLUID MACHINE ESPECIALLY WITH A LIQUID SPRAYING AT TEH OUTPUT

Response to Office Action dated: October 10, 2009

### **Remarks**

Claims 1 through 7 remain in this application. Claim 1 is the only independent claim for consideration. Claims 2-7 are amended herewith to respond to the objection to the use of "Claim", and accordingly have been amended to "claim."

The first Office Action initially raised an issue concerning the Oath or Declaration, and required correction asserting that the Combined Declaration and Power of Attorney was defective because of the citation to "37 C.F.R. §1.56(a)" in regard to the Acknowledgment of Review of Papers and Duty of Candor. Applicant respectfully disagrees that the Declaration is defective in this regard.

The change in the requirement for citation to "Rule 1.56" instead of "Rule 1.56(a)" was announced on February 12, 2008. However, in that Notice, the Office indicated that it was waiving that requirement where the Declaration was filed prior to June 1, 2008. Here, the Declaration was filed on July 20, 2006. The attention of the Examiner is courteously invited to the Notice appearing in the Official Gazette (1327 OG 112), copy attached. Thus, this change has been waived in regard to this and other applications where the Declaration was filed prior to June 1, 2008, and the requirement for a substitute Declaration is traversed. It is requested that the requirement be reconsidered and withdrawn.

The Office Action also objected to the Specification with regard to language appearing in the second paragraph under "Background Art" at page 1 of the Specification, and also in the paragraph beginning on the last line of page 2 under "Disclosure of Invention". Applicant has revised the language of those provisions to adopt more uniform American English. In regard to the revisions replacing the language on the last line of page 2, the language now more closely comports with the description set forth at the last line of page 4 of the specification. As further explained in the last paragraph on page 7, changing the number or cross-section of the channels allows for selection not only of the rotational speed and amount of fluid to flow through the

outlet, but also determines the amount of energy of the flow to be transformed into rotational mechanical energy. Thus, the torsional moment on the shaft is also controlled. The other corrections to spelling and the like address the other objections. It is respectfully submitted that the revised language of these paragraphs resolves any lack of clarity.

Turning next to the rejection of the claims as being anticipated by either U.S. Patent No. 5,178,515 (claims 1 and 2) or CZ 13837 (claims 1, 3, 4 and 7), applicant respectfully traverses these rejections.

The present invention relates to a rolling fluid machine. This machine comprises a chamber where at least a part of the inner surface has a rotary shape and the chamber is provided with at least one inlet for fluid and at least one outlet for the fluid. Within the chamber, a rolling rotor is installed in a manner enabling rolling and swinging. If water (or another fluid) flows through the chamber, the structure of the present invention is such that a stream of the flowing water causes the rotor to lean against the inner surface of the chamber and at the same time, the rotor starts a rolling motion along the inner surface of the chamber. As set forth in claim 1, the space 5 below the rotor 4 and the space 6 above the rotor 4 is interconnected by at least one channel 7.

In contrast, U.S. 5,178,515 to Tsuchiya et al. discloses a totally different machine. Instead of a rolling rotor there is a rocker substantially concentric with the inner peripheral surface of the casing and disposed in the chamber. The rocker is provided with a rocker driving unit for rocking the rocker so as to vary the volume of the space between the rocker and the outlet port with the passage of time, thereby producing a rotating flow in the casing. The rocker does not roll at all. In fact, **any rotary motion of rocker 3 is prevented** by a seal 14, so that the rocker makes a processional motion around the first processional bearing 11. This is set forth explicitly at column 4, lines 51-53 of the Tsuchiya et al. 5,178,515 patent.

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Thus, at a minimum because the Tsuchiya 5,178,515 patent is the antithesis of a rolling rotor mounted in the chamber to enable rolling and swinging, Tsuchiya not only does not anticipate but teaches away from the present invention.

The examiner has also cited to CZ 13837 as a reference under 35 U.S.C. §102(e). Such a citation to a foreign patent publication having an asserted filing date before the effective filing date of the present application is not permitted under 35 USC §102(e). Such an assertion is not supported by the statutory language of §102(e), which specifically applies only to an application filed in the United States (including an international application designating the United States under §351(a) and published in English). The examiner's attention is invited specifically to MPEP 2136.03(I) which makes it explicit that a "reference's foreign priority date under 35 U.S.C. 119(a) - (d) and (f) cannot be used as the 102(e) reference date." "35 U.S.C. 102(e) is explicitly limited to certain references 'filed in the United States before the invention thereof by the applicant' (emphasis added)." The only appropriate reference to Sterba would be to the corresponding International Application claiming the United States, such as PCT/CZ2004/000057 filed September 20, 2004. However, that date is after the priority date of the present application which is 23 January 2004 as claimed in the present application.

Thus, CZ 13837 to Sterba is not citable as a reference against this application under 35 USC 102(e) or any other provision, and the rejection thereon should be withdrawn.

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In view of the foregoing, applicant respectfully submits that this application is now in condition for allowance and early issuance of the Notice of Allowance is courteously requested. Should the examiner have any issues which may be resolved by a telephone conference, they may be addressed to the undersigned at 1-800-445-3460. Any additional fees necessitated by this amendment may be charged to Deposit Account 19-0522.

Respectfully submitted,

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